IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4630 OF 2006
(for Leave to Appeal)
IN
CRIMINAL APPEAL NO. OF 2006

The State of Maharashtra. ..Applicant.

Versus

1.Sidheshwar Atmaram Waghmare,
2.Prashant Atmaram Waghmare,
3.Ashok Uttam Gaikwad,
4.Prakash Uttam Gaikwad,
5.Gautam @ Rahul Uttam Gaikwad, and
6.Khandu Rajaram Dolse. ..Respondents.

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Mr.A.S.Gadkari, APP, for the State.
Mr.Prashant Mangre, Adv. i/b. Mr.K.S.Patil, Adv. for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR, & SMT.V.K.TAHILRAMANI, JJ.

DATED : 3RD JULY, 2007.

ORAL ORDER (PER SMT.V.K.TAHILRAMANI, J.) :

1. Heard Mr.Gadkari, the learned APP for the applicant-State of Maharashtra and Mr.Nangre, the learned Advocate for the respondents-orig.accused Nos.1 to 6.

2. The State has preferred this application for leave to file appeal against the judgment and order dated 4.8.2006 passed by the 14th Ad-hoc Additional Sessions Judge, Pune in Sessions Case No.107 of 2006. By the said judgment and order the learned Sessions Judge acquitted all the respondents-accused mainly under Sections 307 and 324 of the IPC.

3. We have perused the judgment and order passed by the learned Sessions Judge as well as the record which has been produced by the learned APP.

4. PW-2 Ramkrishna is the injured witness in this case. It is the prosecution case that respondent No.1-Sidheshwar came infront of the house of PW-2 Ramkrishna to make enquiry as to why he was quarrelling in the afternoon with his mother. There was hot exchange of words between respondent No.1-Sidheshwar and PW-2 Ramkrishna. At that time Sidheshwar and other accused assaulted PW-1 Jalindar and PW-2 Ramkrishna, with

iron pipe and sticks. The accused were charged under Section 307 of IPC for causing injuries to PW-2 Ramkrishna and under Section 324 of IPC for causing injuries to PW-1 Jalindar. There is variance in the deposition of both these witnesses in respect of assault on PW-1 Jalindar, the evidence of PW-2 Ramkrishna is totally silent on the aspect of assault on Jalindar. As far as PW-1 Jalindar is concerned there is variance between his evidence and the medical evidence. PW-1 Jalindar has stated that he was assaulted on his back. However, there is no injury on his back but injury is found on his chest. In view of this variance, we are of the opinion that the accused have rightly been acquitted under Section 324 of IPC.

5. There is cross-complaint filed in the present case. The said complaint has been filed by respondent No.3 against PW-1 Jalindar, PW-2 Ramkrishna, PW-3 Kevalabai and PW-5 Balu for having assaulted him when he went to enquire why there was quarrel in the afternoon with members from his family.

6. In order to prove the prosecution case with regard to Section 307 of IPC, reliance is placed on the evidence of PW-2 Ramkrishna and the evidence of Dr.Arvind Patil. As far as PW-2 Ramkrishna and other prosecution witnesses are concerned, there is variance in the roles and weapons attributed by them to the accused persons. As far as the medical evidence is concerned, medical record Exh.68 & Exh.69 which has been produced show displaced fracture on right fronto parietal region on the person of one R.Gaikwad. As far as PW-2 Ramkrishna is concerned, PW-9 Dr.Arvind Patil who examined Ramkrishna found that, Ramkrishna had cut lacerated wound, left mid parieto frontal region, contusion over left arm. In his cross examination PW-9 Dr.Patil has admitted that injuries of Ramkrishna are possible if a person while falling comes in contact with wall on that part of body. He also specifically stated that he has not noticed any injury on the right parieto region of Ramkrishna. In Exh.68 & Exh.69, the full name of the injured witness is not mentioned. Neither PW-9 Dr.Arvind Patil nor PW-10 Dr.Sanjay Gosawi were able to state the full

name of the person who has been mentioned in the certificate as ‘R.Gaikwad’. PW-10 Dr.Sanjay Gosawi has also admitted that whatever injuries he noticed on the person of R.Gaikwad is possible by fall on hard object. As observed earlier, PW-9 Dr.Arvind Patil has noticed injuries on Ramkrishna which were on the left side whereas Exh.68 & Exh.69 show the injuries on the right side.

7. Looking to all these aspects, the learned Sessions Judge has rightly came to the conclusion that there is no reliable material that PW-2 Ramkrishna has sustained injuries which would fall under Section 307 of IPC. Moreover, it is seen that the incident has taken place at night. It was raining at the time of the incident, hence there was strong possibility of Ramkrishna sustaining injuries by fall. There is a cross case, wherein the witnesses in the present case are accused persons. The learned Sessions Judge after taking all the evidence into consideration, has observed that, from the prosecution story itself, it appears that respondent No.1-Sidheshwar had been to the home of PW-2 Ramkrishna to inquire

as to why there was quarrel with the female members of his family and there was no intention to cause any injury which would cause death. The prosecution has not proved that there was intention on the part of any of the accused to attempt to commit murder of any of the prosecution witnesses. The learned Sessions Judge has further observed that the prosecution has not established its case beyond reasonable doubt.

8. Looking to the evidence on record, we are of the opinion that the view taken by the learned Sessions Judge is a reasonable and possible view.

9. It is well settled that if the view of acquittal could have been reasonably arrived at then mere circumstance that the lower Court could have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, we are referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**. In the case of **C.Anthony**, the Supreme Court has

observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record.

10. We have already observed earlier that the view taken by the learned Sessions Judge is a reasonable and possible view, in this view of the matter no interference is called for. Application for leave to appeal is rejected.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]